

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,	}	
	}	
Plaintiff,	}	
	}	
vs.	}	Cv. No. 06-2012-M1/P
	}	Cr. No. 91-20047-04-M1 (Tu)
JOSEPHINE LEDEZMA,	}	
	}	
Defendant.	}	
	}	

ORDER CONSTRUING FILING AS MOTION PURSUANT TO
28 U.S.C. § 2244(b)(3)
AND
ORDER TRANSFERRING MOTION PURSUANT TO 28 U.S.C. § 2244(b)(3)
TO UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Defendant Josephine Ledezma, Bureau of Prisons inmate registration number 94938-012, an inmate at the Federal Correctional Institution in Dublin, California, filed a pro se motion pursuant to 28 U.S.C. § 2255 on January 10, 2006.

In 1991, a federal grand jury returned an indictment against Ledezma and several codefendants. Ledezma was charged with conspiring to possess one thousand six hundred (1600) kilograms of cocaine with the intent to distribute, in violation of 21 U.S.C. §§ 841(a)(1) and 846, and aiding and abetting in the possession of three hundred fifty-one (351) kilograms of cocaine with the intent to distribute, in violation of 21 U.S.C. §§ 841(a)(1) and 2. The case proceeded to trial and, on April 10, 1992, the jury convicted Ledezma on both counts of the indictment. District Judge Jerome

Turner subsequently sentenced Ledezma to life imprisonment. Judgment was entered on November 6, 1992. The United States Court of Appeals for the Sixth Circuit affirmed Ledezma's conviction and sentence. United States v. Ledezma, 26 F.3d 636 (6th Cir. 1994).

Ledezma filed a motion pursuant to 28 U.S.C. § 2255 on April 6, 1998, and Judge Turner denied the motion without a hearing as time barred, and denied a certificate of appealability, on June 2, 1998. Ledezma v. United States, No. 98-2317-Tu/A (W.D. Tenn.). Judgment was entered on June 10, 1998. Ledezma did not appeal.

Ledezma filed a motion pursuant to 28 U.S.C. § 2255 on June 7, 2001 and, on October 10, 2001, filed a motion to withdraw her § 2255 motion. Chief Judge James D. Todd issued an order on November 16, 2001, construing the defendant's motion as a motion seeking a voluntary dismissal without prejudice, pursuant to Fed. R. Civ. P. 41(a)(1)(i), and, as so construed, granted the motion. Ledezma v. United States, No. 01-2445-T (W.D. Tenn.). Judgment was entered on November 30, 2001.

On April 17, 2002, Ledezma filed a motion seeking a reduction in her sentence, pursuant to 18 U.S.C. § 3582(c)(2), on the basis of Amendment 505 to the United States Sentencing Guidelines. The case was reassigned to this judge, who denied the motion on August 11, 2003. Ledezma's appeal was dismissed for failure to prosecute. United States v. Ledezma, No. 03-6217 (6th Cir. Feb. 5, 2004).

On June 28, 2005, Ledezma filed an application for leave to file a second or successive § 2255 motion with the Sixth Circuit to assert claims pursuant to the Supreme Court's decisions in Blakely v. Washington, 542 U.S. 296 (2004), and United States v. Booker, 543 U.S. 220 (2005). On July 21, 2005, Ledezma filed a letter seeking to withdraw her application. The Sixth Circuit construed the letter as a motion to dismiss, pursuant to Fed. R. App. P. 42(b), and, as so construed, dismissed the application. In re Ledezma, No. 05-6029 (6th Cir.).

Ledezma sent a courtesy copy of her application for leave to file a second or successive § 2255 motion to the clerk of this Court, where it was docketed as a criminal motion. The Court issued an order on July 18, 2005 denying the motion as this Court has no authority to authorize the filing of another § 2255 motion.

On January 10, 2006, Ledezma filed another § 2255 motion in which she asserts that she is entitled to a new sentencing hearing in light of Booker.

This motion is a successive § 2255 motion that cannot be filed in this district without obtaining permission from the United States Court of Appeals for the Sixth Circuit. 28 U.S.C. § 2244(b)(3)(A); see also United States v. Bender, 96 Fed. Appx. 344 (6th Cir. Apr. 26, 2004); McQueen v. Scroggy, 99 F.3d 1302, 1334-35

(6th Cir. 1996).¹ Under In re Sims, 111 F.3d 45, 47 (6th Cir. 1997) (per curiam), "when a second or successive petition for habeas corpus relief or § 2255 motion is filed in the district court without § 2244(b)(3) authorization from [the Sixth Circuit], the district court shall transfer the document to [the Sixth Circuit] pursuant to 28 U.S.C. § 1631."

Ledezma's latest motion cannot be filed in this district without permission from the Court of Appeals. Therefore, under Sims, 111 F.3d at 47, and 28 U.S.C. § 1631, it is hereby ORDERED that the Clerk transfer this motion to the United States Court of Appeals for the Sixth Circuit.

IT IS SO ORDERED this 27th day of February, 2006.

/s/ Jon P. McCalla
JON PHIPPS McCALLA
UNITED STATES DISTRICT JUDGE

¹ It does not appear that Ledezma has filed a copy of this motion with the Sixth Circuit.